THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNEDAY, THE FIRST DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 9723 of 2004

Between:

1 Modugula Mallikarjuna Reddy, S/o Maheswara Reddy,

R/o Tsundur, Guntur District.
2 Poluru Ravindranatha Reddy alias Pitchi Reddy, S/o Vema Reddy,
R/o Munnangivaripalem, Tsundur Mandal, Guntur District.

..... PETITIONERS

AND

1 Government of A.P.rep.by their Secretary, Law Department, Secretariat

Buildings, Hyderabad.
2 The Collector, Guntur District, Guntur.
3 Devarapalli Immanuel, S/o Neelambaram,
Ambedkar Nagar, Tsundur, Guntur District.
4 B.Chandrasekher, Advocate
6/10, Brodipet, Guntur.
5 G.Siva Nageswara Rao, Advocate
Tenali, Besides Town Church, Tenali, Guntur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ or Order or direction declaring the action of the first respondent at the behest of other respondents in issuing G.O.Rt.No.1212 Law (L.A.and J.Courts A.2) Department dated 23-08-2000 as arbitrary, illegal and unconstitutional and direct the trial of S.C.No.36/93 on the file of the Court of Special Sessions Judge for Trial of Cases under S.C.s & S.Ts (POA) Act, 1989, Guntur at Tsundur be conducted by the Public Prosecutor attached to that court or any other Public Prosecutor at Guntur.

Counsel for the Petitioners : MR.T.BAL REDDY

Counsel for the Respondent Nos.1 and 2 : GP FOR LAW & LEGISLATIVE

AFFAIRS

Counsel for the Respondent No.3: B.NALIN KUMAR

Counsel for the Respondent Nos.4 and 5: K.G.KANNABHIRAM

The Court made the following :

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ORDER:

Heard Sri T.Bal Reddy, the learned senior Counsel appearing on behalf of the petitioners, and the learned Government Pleader for Law and Legislative Affairs, and Sri K.G.Kannabhiram, the learned senior counsel appearing on behalf of the contesting respondents.

The petitioners herein who are the accused Nos.6 and 93 respectively, filed this Writ Petition, inter alia, seeking for a Writ of Mandamus to declare the impugned proceedings in G.O.Rt.No.1212 Law (L.A. and J. Courts A.2) Department dated 23-08-2000, issued by the 1st respondent herein, appointing the respondent No.4 herein as a Special Public Prosecutor and the respondent No.5 as his assistant to conduct the prosecution in S.C.No.36/1993 on the file of the Special Sessions Court for Trial cases, Guntur, under S.Cs. & S.Ts. (POA) Act, 1989, as illegal and arbitrary.

The case of the petitioners in brief is that in respect of an incident occurred on 06-08-1991at Tsundur village, Guntur District, a charge sheet has been filed against 129 accused for the alleged offences under Sections 148, 324, 307, 302, 201 and 120-B read with 34 I.P.C. and Section 3 of the S.Cs. & S.Ts. (POA) Act, 1989, (hereinafter referred to as the said Act), wherein the petitioners were shown as accused Nos.6 and 93. The said case was committed to the Court of Sessions and the case has undergone checkered events. It was submitted that the case was pending in the Court of IV Additional Sessions Judge, Guntur, which is a designated Court as Special Judge for trial of cases under the said Act and on instructions a Camp Court was to be held at Tsundur, by reviewing the earlier orders, much against the interests of the accused. It was pointed out that the respondent No.4 herein, who is a practicing advocate at Guntur and who is a member of the A.P.P.U.C.L.C. and who has been propagating the naxalism prevailed upon the local villagers to make a representation before the Government for appointing him as a Special Public Prosecutor in the said case. It is further urged that he has been holding of meetings at Ambedkar Nagar at Tsundur and insisting upon for his appointment as a Special Public Prosecutor and thus he is taking personal interest and tutoring the witnesses

to depose against the accused. Having fallen a prey to the advice, the Government obtained a report from the Collector and issued impugned proceedings appointing the 4th respondent as Special Public Prosecutor and the 5th respondent to assist him under the purported exercise of power under Section 24(8) of the Code of Criminal Procedure, (hereinafter referred to as the Code), which according to the petitioners is totally without jurisdiction, arbitrary and illegal. It is the case of the petitioners that the Public Prosecutor has already been appointed to conduct the cases on behalf of the prosecution in the said Special Court and who is very much competent and efficient, as against the 4th respondent. Further, there exists about eight Public Prosecutors, working in the various Courts at Guntur, whose claim has not been considered. The respondent Nos.4 and 5 do not possess any experience or merits for being considered for such appointment. Therefore, in the circumstances, neither of the 4th and 5th respondents can be expected to be fair and impartial in conducting the prosecution cases, hence, the very selection and choice of their own advocates as Public Prosecutor and assistant is totally against the law. Having come to know of the appointment lately, the petitioners have filed a comprehensive representations on 03-02-2004 and 08-06-2004 rising objections before the respondent No.1 and the same are still pending. Hence, the Writ Petition.

Contesting the case of the petitioners, it has been pointed out on behalf of the respondents that having regard to the nature of incident and peculiar circumstances of the case, the Government has issued the impugned orders appointing the respondent Nos.4 and 5 as prosecutors and there is absolutely no illegality, much less any arbitrariness in such appointment and therefore the Writ Petition is liable to be dismissed.

Sri T.Bal Reddy, the learned Counsel appearing for the petitioners submitted that having regard to the provisions of the special enactment i.e., S.Cs. & S.Ts. (POA) Act, 1989, and the rules made thereunder a special enactment, wherein a specific procedure is contemplated for appointment of its own Public Prosecutor to conduct the prosecution, hence the Government cannot invoke the powers as conferred under Section 24(8) of the Code and further having regard to the overriding provisions under the said Act, the general procedure as contemplated under the Code has no application. It was submitted that no usual process as contemplated i.e., by sending a panel etc., has not been followed, and the entire impugned action is totally vitiated. Further, it is their case that the victims themselves have no right to

seek an appointment of a Prosecutor. Hence, the impugned action is totally arbitrary, vitiated, bad and illegal.

Sri K.G.Kannabhiram, the learned senior Counsel appearing on behalf of the contesting respondents, submitted that the offence has taken place as long back as in the month of August 1991 and still prosecution is yet to make a beginning and at every stage, it is only at the instance of the some or other accused, the proceedings are stalled by taking recourse to some or other proceedings unsuccessfully and the petitioners cannot have any grievance against such appointment, more so no prejudice is caused to them.

Having regard to the submissions made from both sides and on perusal of the material, the question which falls for consideration in this writ petition is, whether the impugned orders of the respondent No.1 herein appointing respondent No.4 as Special Public Prosecutor and respondent No.5 to assist him is legal and justified.

Before considering the said case, the offence has occurred in August 1991 and there have been various earlier proceedings from both sides in view of nature of incident. However, now the challenge is against the appointment of the respondent Nos.4 and 5 as Special Public Prosecutor and an Assistant respectively. The main objection raised on behalf of the petitioners is that in view of the overriding powers conferred under the provisions of the said Act, the general provisions as contained under Section 24(8) of the Code of Criminal Procedure cannot be made applicable. At this stage, it is necessary to peruse the said provision under which the appointment is made, which reads as follows:

> "Sec.24 (8) The Central Government or the Sate Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor."

On a bare reading of the provision it contemplates that either the Central Government or the State Government can appoint a special Public Prosecutor for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years. This is in contra distinction to the normal appointment of a Public Prosecutor, as provided in the earlier clauses under the very same provision. Now it is necessary to note the provisions of the S.Cs. & S.Ts. (POA) Act, 1989 under Chapter 4 thereof, where a provision has been made under

Section 15 for appointment of a Special Public Prosecutor, which reads as follows:

> "**15. Special Public Prosecutor**:- For every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court."

It contemplates that the State Government by appropriate notification make an appointment as a Special Public Prosecutor for every Special Court for the purpose of conducting the cases in that Court.

Rule 4 of the S.Cs. & S.Ts. (POT) Act, 1995 provides for the procedure in regard to the appointment of such Special Public Prosecutor in such Special Courts.

A reliance was also sought to be placed on behalf of the petitioners under Section 5 of the Code, which reads as follows:

> "**5. Saving.—** Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law *for the time being* in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

Under this provision, the powers and jurisdiction as conferred under a Special law is saved.

Considering the provisions under the Code and the said Act, it amply makes clear that a provision made under the Act for appointment of a Special Public Prosecutor for every Special Court and for conducting the cases in that Court. The provision made for appointment of a Public Prosecutor for every criminal Court, as contemplated under the earlier sub clauses of Section 24 of the Code. Whereas the sub clause 8 of Section 24 in contradistinction to the provision for general appointment or to the provision under the said Act for appointment of a Special Public Prosecutor to the Court, makes an exception and provides for appointment for a person as a Special Public Prosecutor for the purpose of any case or class of cases. Thus, there is a clear and categorical distinction for normal appointment of a Special Public Prosecutor in general for a Court for conducting the cases thereunder

and for appointment of a Special Public Prosecutor in respect of any particular special case or class of cases. It is to be noticed that there is no similar such provision as provided for in sub clause 8 of Section 24 of Code for appointing a Special Public Prosecutor in respect of any special or particular case or class of cases in distinction to normal one for or all the cases in the Court. Therefore, non-abstantee clause as provided under Section 19 of the said Act would not come against the applicability of sub clause 8 of Section 24 of the Code of Criminal Procedure, mainly in view of the fact that there is no such similar provision made or provided for such a situation under the provisions of the said Act. It is only where a specific provision is made in the Special Act, the provision of the Code is sought to be excluded. However, where a situation is not provided, the provision applicable in the Code can be made applicable. In the circumstances, it is to be held that in respect of any particular or special case or class of cases, the Government has ample powers under Sub Clause 8 of 24 of the Code of Criminal Procedure to make appointment for such a Special Public Prosecutor.

In support, the learned Counsel for the petitioners sought to place reliance on the Judgment of this Court in BRAHMANANDAM vs. STATE OF A.P. to contend that petitioners can as well object to make any such appointment on the ground of reasonable apprehension of bias against them. In the said case Justice Jagannadha Rao (as he then was), considering the appointment of a Special Public Prosecutor under the similar such provision, laid down the principles avoid any such apprehensions and to dispel them. In the said case having regard to the fact that some applications have been filed by him and especially on the basis of various other allegations made against and identifying himself as a counsel, it was held that he incurred a disqualification. However, in this case, except making an allegation, no proper foundation is laid nor any case is made out for the apprehensions expressed by the petitioners. In regard to the conduct of cases by the prosecution, the Supreme Court recently has laid down various guiding principles as reported in ZAHIRA HABIBULLA H.SHEIKH v. STATE OF GUJARAT and VARADA RAMA MOHANA RAO v. STATE OF A.P., which are famously known as Best Bakery cases. On a consideration of the principles laid thereunder, it cannot be said that there is any prejudice caused to the petitioners herein nor there is any basis in the apprehension as sought to be expressed. It is relevant to note at this stage that this case has come to this Court in other proceedings at different stages and ultimately this Court in Crl.M.P.No.3741 of 1994 dated 03-02-1995 having taken note of the

entire checkered events has rejected the objections raised on behalf of the accused. The impugned appointment was made as long back as 23-08-2000, which is to the knowledge of everyone, no objection has been raised in this regard and in fact all the accused including petitioners are acquiesced there to. That apart, in view of the facts and circumstances of the case, I do not find any prejudice caused to the petitioners nor any justification for the apprehensions as expressed.

In view of the above, neither I find any merits in the above Writ Petition nor any warrant to interfere with the impugned orders. The Writ Petition is, accordingly, dismissed. No costs.

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B.PRAKASH RAO, J.

Dated 01-09-2004.

Note: L.R. copy to be marked.

B/O

SKMR

To

1 The Secretary, Government of A.P., Law Department, Secretariat

Buildings, Hyderabad.
2 The Collector, Guntur District, Guntur.
3. 2CCs to G.P. Law and Legislative Affairs, High Court Buildings,

Hyderabad, (OUT).

4. 8 LR copies.

5. The Under Secretary, Union of India, Ministry of Law, Justice and

Company Affairs, New Delhi.

6. The Secretary, A.P. Advocates' Association Library, High Court of

A.P., Hyderabad.

7 2CD copies.